In the High Court of Judicature at Madras

Dated: 02/04/2004

Coram

The Hon'ble Mr. Justice R. Jayasimha Babu
and
The Hon'ble Mr. Justice M. Karpagavinayagam

Writ Appeal No. 249 of 2002
and
W.A.Nos., 282 and 448 to 452 of 2002
and 80 of 2004 and
Writ Petition Nos.42067, 42068, 43365, 43366, 44213 to 44216, 44305 to 44307, 44500 to 44505, 44883, 44902 to 44905, 44906 to 44909, 45058 to 45060, 45183 to 45187, 45441 to 45445, 45458, 45585 to 45589, 45727, 45848, 46079 and 47021 of 2002, 13, 277, 298, 423, 505 to 509, 1316 to 1318, 1441 & 1442, 1505, 2082, 2083, 2118, 2759, 2869 to 2871, 3971, 4135, 4310, 5486, 6891, 7323, 8364, 9152, 9153, 11642, 13617, 17518 to 17523, 17559, 17560, 17562, 17563, 17587 to 17590, 17666 to 17670, 18025 to 18030, 18168 to 18174, 18403 to 18407, 18559 to 18565 , 18763, 19088, 19089, 19230, 19235, 19240, 22331, 22652, 26626 to 26631 of 2003, 45470 of 2002, 13211 to 13214, 13491 to 13493, 14289, 14293, 14294, 16806 to 16808, 17613 to 17617, 17852, 18658, 18663, 18668, 18673, 18674, 18776, 19247, 19299, 19485, 19717 and 19655 to 19670 of 2003, 43148 and 43149 of 2002, 7717, 7718, 17152, 16886, 19189 to 19191, 19628 to 19633, 20434, 21205, 21208, 21206, 21207, 21563, 21564, 23813, 24289, 29431 to 29434, 13704, 13705, 16691 to 16694, 18327 , 18287, 18665, 17464 to 17467. 23909 and 23910 of 2003, 44675 of 2002, 6726, 26468 to 26471, 14041 to 14043, 18107, 18541 and 19372 of 2003

W.A. No: 249 of 2002 :

1. The State of Tamil Nadu,
rep. by its Secretary,
Education Department,
Fort St. George,
Chennai 9.

2. The Director of Elementary
Education,
College Road,
Chennai 6.

3. The District Elementary
Educational Officer,
Ramnad.

4. The Assistant Elementary
Educational Officer,
Mudukulathur. ... Appellants

-vs-

Pallivasal Primary School,
rep. by its Correspondent,
Mudukulathur. ... Respondent

Mr. V.R. Rajasekaran : For appellants in W.A.Nos.249,282,
Spl.G.P.(Edn.) 448 & 452 of 2002

Mr. M.M.D.Ibrahim Ali : For respondents in WA.Nos.249,282
448 & 452 of 2002

Mr. Paul Vasanthakumar : For appellants in WA.Nos.80/2004
& petitioners in WP.Nos.44213 to
44216/2002,44500 to 4450 5, 44906
to 44909/02, 45441 to 45445, 45585
to 45589/02, 13/03, 50 5 to 509,
2869 to 2871/03, 6891, 8364, 9152,
17518 to 17523, 18025 to 18030,
18165 to 18174, 18403 to 18407,
188559 to 18565, 18763 to 18766,
19088 to 19089, 7717 & 7718/03,
16886 to 16888/03, 19189/03 to
19191/03, 19628 to 19633/03,
20434/03, 23813, 16691 to 16694/03
44675/02

Mr. C. Selvaraj : For petitioner in W.P.Nos.42067,
42068/02, 43365, 43366, 44305 to
44307, 46079/02

Mr. S. Kamadevan : For petitioner in W.P.No.2118/03

Mr G. Ethirajulu : " " in W.P.No.44883/02

Mr. R. Sudhakar : " " in WP.No.26468 to
26471/03

Mr.PTS.Narendravasan : " " in WP.Nos.44902 to
44905/02, 45058 to 45060/02
45183 to 45187/02

Mr. V. Sanjeevi : For petitioner in WP.No.45458/02

Mr.T. Madasamy : " " in W.P.No.45727/02,7323/03,
16806 to 16808/03

Mr.V.R. Rajasekar : for respondents

Mr. S. Ramu : For petitioner in WP.No.45848/02
and 17852/02

Mr.M.Md.Ibrahim Ali : For petitioners in WP.Nos.47021/02
2082/02,2083/03,3971/03,5486/03,
43148 and 43149.

Mrs. K. Suguna : For petitioner in WP.No.277/03

Mr.R. Arunmozhi : " " in WP.Nos.298/03,1505/03

Mr.S. Dharmakkan : " " in WP.No.1316 to 1318/03

Mr.S.N. Ravichandran : " " in WP.No.1441/03

Mr. Sathyanarayanan : " " in WP.No.26626 to 26631/03

Mr.AR.L.Sundaresan : " " " " 2759/03,13211 to
13214/03,13491 to 13493/03,
14289/03, 14293/03, 14294/03,
13704 & 13705/03, 13705/03,
18541, 35680, 14042, 13213,
14294,19372,24052,18107,18098/03

Mr. K.Gini Liew Manuel : For petitioner in W.P.No.4185/03

M/s.Aparna & AGA
Associates : " " in WP.Nos.4135/03 & 4310/03

Mr. Antony Xavier : " " in WP.No.11642/03, 13617/03

Mr. A. Saravanan : " " in W.P. Nos 17559, 17560, 17562,
175 63, 17587 to 17590, 17666 to 17670/03,
19230/03,19235/03,19240,22331/03
18658, 18663,18668,18673,18674
18776, 19299,19485,21205/03,
21208,21206,21207,18665,17464/03

Mr. M. Kamalanathan : For petitioner in WP.No.22652/03

Mr. V. Chandrasekaran : For petitioner in WP.No.19247/03

Mrs. Sudha Ramalingam : " " in W.P. No.18287/03

Mr.A. Sankarasubramanian : " " in W.P. No: 23909 and 23910 of 2003

Mrs. G. Thilakavathi : " " in W.P. No: 6726/03

Mr. N.R. Elango : " " in W.P. Nos: 19665 to 19670 of 2003
& 24289 OF 2003

Mr. C.T.Mohan : " " in W.P. No: 21563 and
21564 of 2003

Mr.S. Sounthar : " " in W.P. No: 18327/03

Mr. V.R.Rajasekaran : For respondents in all WPs.

Spl.G.P (Edn)

Mr. K. Ravichandran : For R5 in WP.Nos. 44213,
44216 of 2003
For R4 in WP.Nos.18029/03
For R4 in WP.7718/03
For R4 in WP.Nos.16691 to
16694/03

Mr. S.N.Ravichandran : For R3 in WP.Nos.44214 &
44215/03, R3 in WP.44501,
44503 to 44505/02,44906 to
44909, 45183, 45197,45441 to
45445/02, R1 in W.P. Nos.
45586, 45588, 45589

Mr.S.Guala : For R4 in WP.No.44883/02

Mr. T. Sureka : For R4 in WP.Nos.17587,
17588, 17666, 17668

Mr. A. Karthikeyan : For R4 in WP.18763 to 18765

Mr. Issac Mohanlal : For R4 in WP.17615 to 17617

Mr. P.Peppin Fernando : W.P.No.18663, 18674, 18665

Mr. T.S.Sivaganam : W.P.No.18673

Mrs. A. Deepa : For R4 in WP.18287

Mr.Joseph Thatheus Jerome : For R3 in WP. 505 & 509/03
" " 2869 to 2871/03
For R4 in WP.18025 to
18028, R4 in WP.18168 to
18174, R$ in 19235, 19240,
18658, 18668, 18776
R4 in WP.19190/03

Aparna Aga Associates : R3 in WP.4135/03

Mr. M.Sriram : 17559, 17560,17562,17563/03
17590, 17670

Mr. R. Vijayakumar,
Government Advocate : For respondents in WP.Nos.
45470/02, 13211 to 13214/03
13491 to 13493, 14289,
14293 14294, 16866 to
16808, 17603 to 17617, 17852
18658, 18663, 18668, 18673,
18674, 18776, 19247,19299,
19485, 19717,19655 to 19670
23813, 24289, 29431 to
29434

:J U D G M E N T

M.Karpagavinayagam, J.

By this order we dispose of only those of the writ appeals and writ petitions now before us in which the validity of part or whole of G. O.Ms. No: 155 dated 3.10.2002 and or action taken in terms of that Government Order is in issue. In this order, we will only deal with the validity of that Government Order. If in the petitions before us there are issues other than the validity of G.O. Ms. No: 155, those matters shall be listed separately for disposal of those issues.

2. It is convenient to set out G.O. Ms. No: 155 in question in its

entirety.

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SCHOOL EDUCATION (D-2) DEPARTMENT

G.O. Ms. No: 155 Dated : 3-10.2002

Read :

1. G.O.Ms.No: 559 Education dated 11.7.95

2. G.O.Ms.No. 203 Education dated 19.3.96

3. G.O.Ms.No. 394 School Education dated 12.9.97

4. Order in W.P. No. 6388/98 batch judgment of the High Court, dated 19.5.98.

5. Order in W.A. No: 991 to 998/98, etc. Batch Judgment of the Division Bench dated 29.6.2001

6. Proceedings of the Director of Ele. Education issued in letter Na.Ka.21523/EG4/2001 dated 27.7.2001.

7. Proceedings of the Director of School Education, issued in Na.Ka.No. 689/D3/99 dated 10-3-99, 10-9-99 and 9-10-2001.

ORDER:

In the G.O. first read above orders were issued based on the High Court order that B.Ed teachers shall not be appointed in Secondary Grade vacancies. In the order second cited, permission was granted to approve the appointment made till the issue of G.O.Ms.No.559, Education, dated 11.07.1995 subject to their appointments are otherwise in order and further orders if any by the Court in any pending case. In the G.O. third read above the condition was extended to High School and Higher Secondary Schools also. The writ petitions were filed challenging G.O.Ms.No.559 dated 11.07.1995 and G.O.Ms.No.394 dated 12.0 9.1997 (W.P.No.6388/93 etc.) and the same was dismissed by the High Court, Madras. Writ Appeals were preferred before Division Bench and final order was passed on 29.06.2001 with following directions :
"We appreciate the stand taken by the learned Additional Advocate General, which is a pragmatic stand and has an unshakable base of experience.

In order to avoid an undue hardship to these teachers who have been serving for years together in the lower classes even after studying for a graduation degree that too on meager salaries, it will be better if an exercise is taken for the confirmation of these teachers. The modalities of which may be decided by the State Government. The State Government may decide to give the practical training or may even choose to individually examine each case on its own merits. There may be individual cases where the Management was absolutely justified in employing a graduate teacher and there could be others where there was no such justification. We do not wish to draw the details and leave it to the State Government. However, the State Government shall take up this exercise as we have indicated above providing relief to at least such teachers who have been inducted prior to the dismissal of the Writ Petitions before the learned single Judge. We direct accordingly while dismissing the appeals and the writ petitions. No costs."

2. In compliance with the Division Bench Order dated 29.6.2001 reports were received from the Director of School Education and the Director of Elementary Education for approving the B.Ed.. and Tamil Bandits appointed in Secondary Grade vacancies.

3. After careful consideration of the same by the Government following order is passed :

i) B.Ed. Graduates and Tamil Pandits appointed in sanctioned regular posts from 11-7-95 to 19-5-98 in Minority and non-minority primary, middle, High and Higher Secondary Schools are given permission to grant approval.

ii) B.Ed. Graduates and qualified Tamil Pandits who are appointed in Secondary Grade Vacancies, shall undergo one month child Psychology through D.I.E.T in their own expenses and the Director of School Education shall take necessary steps. The Director of Teacher Education shall make arrangements for training through the Principal, D.I.E.T. and issue completion certificate for the short term course.

iii) The above appointments being made contrary to the Government Orders and the challenge made before the High Court being dismissed and the Writ Appeals also being dismissed, the salary for the above period could not be granted. Hence salary will be paid form the date of completion for training after approving the appointments of the said Secondary Grade Teachers.

iv) Before imparting training to the said teachers as stated above who are appointed in non-minority Primary, Middle, High and Higher Secondary Schools, the concerned approving officers should verify whether such appointments made are through employment Exchanges, and Rule of Reservation, age eligibility and other Rules are followed while appointing the said Secondary Grade teachers in the said Second Grade Posts and

they should have undergone child Psychology training. Only after fulfilling the above requirements the concerned approving officers shall take steps to impart such training to the said teachers and they are fully responsible for the same.

v) For the Minority Schools, the Rule of Reservation, Rule of appointing through Employment Exchanges are not applicable. The B.Ed. Graduates / Tamil Pandits appointed as Secondary Grade Teachers in Secondary Grade posts in Minority Schools following the other eligibility Rules such as completion of child Psychology training etc. The concerned approving officers shall take steps to impart training to the said teachers and they are fully responsible for the same.

vi) The Secondary Grade Teachers who are now ordered to grant approval are given relaxation for not possessing teachers training certificate and relaxation is issued as per Rule 15(6) VI (3) of Tamil Nadu Private Schools (Regulation) rules, 1974.

vii) Those teachers who are receiving salary in view of Court Stay orders and their appointments are all made contrary to the Government Orders, the several writ petitions filed by the B.Ed. Graduate teachers who are appointed in the Secondary Grade Posts were dismissed by the Hon'ble Division Bench of the High Court,Madras by order dated 29.6.2001. Hence the payment of salary is ordered to be stopped to the teachers who are receiving salary in view of stay orders. The Director of School Education and the Director of Elementary Education are hereby required to send detailed reports for initiating proceedings for recovery of salary which was paid already to the above said teachers as stated above.

Viii)In recognised Private Schools, for promotions, for fixing salary and for pensionary benefits, the period during which the above said teachers who worked without approval will not be taken into account.

ix) The B.Ed. Graduates / Tamil Pandits who are appointed in the Secondary Grade posts, salary shall be paid only in the scale of Secondary Grade Teachers and Special incentives will not be granted. During their tenure as Secondary Grade Teachers they are not eligible for Special pay and

incentives for acquiring Higher Qualification and Declaration to that effect should be obtained from the respective teachers.

x) The Director of Elementary Education and the Director of School Education are requested to implement the above conditions strictly without making any additional expenses to the Government.
xi) The appointments of B.Ed. Graduates in the Secondary Grade posts made after 19-5-98 will not be accepted.

3. This order is issued with the concurrence of the Finance Department in A.Sa.Ku. No. 1983/FS/P/2002 dated 21-6-2002.
(By Order of the Governor)"

3. The entire background in which the Government Order came to be issued is set out in that Government Order. By G.O. Ms. No: 559 dated 11.07.1995 it was directed that B.Ed. Teachers shall not be appointed in Secondary Grade vacancies. Despite that order, appointment of persons like the appellants / petitioners before us were made in contravention of that Government Order. The validity of that G.O. was also challenged unsuccessfully. In the Writ Appeals preferred against the judgment dismissing the writ petitions, the Division Bench upheld G.O. Ms. No: 559. The natural consequence of that could have been the throwing out of employment persons like the appellants / petitioners who had been employed in violation of that G.O.

4. With a view to mitigate their hardships, the Court, after recording a submission made by the learned Additional Advocate General that efforts would be made to save the employment of these persons, left it open to the Government to frame an appropriate scheme in that regard.

5. The Government thereafter provided training in child psychology to the persons who had been appointed in contravention of the G.O. 55 9 prior to the date of dismissal of the writ petition on 12.09.1997. Those persons were to be confirmed in their places after completion of training and with effect from the date they complete the training.

6. The Government Order No: 155 directs recovery of salary paid to the appellants/ petitioners on the ground that prior to their completing the training, they could not have held the posts that were held by them. There is no dispute about the fact that these persons had actually worked. Salary paid to persons who had actually rendered service cannot be regarded as amount paid as gratis. More over the Division Bench had noticed the fact that these persons had been working and had indicated that it would be equitable to allow them to remain in employment. It was left to the Government to device a scheme by which these persons could acquire qualifications which were essential for holding the post to which they had been appointed at a time when they did not possess the qualification. The salary that had been paid to them during that period when they were actually teaching, even though without the

requisite qualifications, in our view, is not an amount which they should be called upon to repay. It has been noticed by the Division Bench which upheld the G.O. Ms. No: 559 that most of these teachers came from a poor background, that it was after a great deal of effort before that they could equip themselves to a limited extent and thereafter had been working in the schools for meager salaries. Directing such persons to repay huge amounts, huge amounts because the entire salary paid over a period of nearly nine years would amount to inasmuch as over five lakhs of rupees per person, would cause untold hardship to such teachers. We, therefore, set aside that part of the Government Order namely sub-para (vii) of Para 3 which directs recovery from these teachers.

7. So far as the approvals / confirmation is concerned, Government was not under any duty to approve or confirm the appointment of appellants / petitioners who did not possess the qualifications prescribed when, they were improperly appointed to the posts. Their position cannot be equated to that of those who possess the qualification and had been duly appointed. Their remaining in their post was only by reason of a sympathetic view taken by the Division Bench which had upheld the Government Order which had directed that persons with B.Ed. Qualification are not to be appointed in Secondary Grade vacancies.

8. Their right to be regarded as persons eligible for confirmation / approval can be said to arise only after they acquired, after their training, a minimum prescribed qualification. The Government here has shown great concession to them by allowing them to retain their position even without obtaining the requisite diploma or certificate in child psychology by giving to them training in child psychology. We see nothing wrong in the Government directing that their approval / confirmation can only be on and after the date they complete the training. Their past service however shall count for pension.

9. It was submitted by some of the counsel for the appellants / petitioners that there was delay in providing training. Complaint of this nature cannot be made by such of these persons. Even according to them over 1000 persons have been appointed contrary to the G.O. Ms. No: 559. The fact that Government took some time to formulate a scheme and provide training to them in batches cannot be a matter for complaint especially as the continued functioning of these persons as teachers was not disturbed on account of the time required by the Government for providing training.

10. A submission was also made for some of those among the appellants / petitioners that they have not been paid salary by the State. The State was not under any obligation to pay salary to persons who were not qualified and who have been appointed contrary to Government Order. Such persons must have been paid some amount by the management who employed them. Government cannot be directed to shoulder that liability for payment to such persons and in cases where payment had not been made. What has been said by us in relation to the persons who had received salary and recovery from whom has been held by us to be unwarranted, would apply to the Government as well as any direction to it to pay salary to a large number of such persons who did not, at the

relevant time, possess the prescribed qualification, would result in a huge burden being imposed on the Government even when it had committed no wrong.

11. We, therefore, allow the writ appeals and writ petitions to the limited extent of directing that no recovery be made from the persons to whom the Government had already released grants and paid salaries. The writ appeals / writ petitions are disposed of accordingly. Connected miscellaneous petitions are closed.

Index : Yes
Website : Yes

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